IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 12TH SEPTEMBER 2007 / 21ST BHADRA 1929

Bail Appl..No. 5507 of 2007()

CRIME NO. 618/2007 OF MALAPPURAM POLICE STATION

PETITIONERS/ACCUSED

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1. V.BABU RAJ,S/O. GOVINDAN NAIR,
   VELLOTH HOUSE, PATHAIKKARA,
   PERINTALMANNA AMSOM.P.O,.PERINTALMANNA.

2. SHYJU,S/O. KUMARAN,
   KUTTANPALLI HOUSE, MYLAPPURAM,
   P.O. MYLAPPURAM.

3. M.K.MOHANAN,S/O ABOOBACKER,
   MOOLATH KOLAKADAN,VADAKKAMANNA, P.O. KODUR,
   MALAPPURAM DISTRICT.

4. K.M.MUJEEB RAHIMAN,S/O. KOYAMU,
   KAKKAMOOLAKKAL HOUSE,ANAKKAYAM AMSOM,P.O.
   PERIMBALAM.

5. AZEEZ CHEERANTHODI,S/O. ABDULLA,
   NEAR NEW BUS STAND, MANJERI.

6. SHAHID.K.S/O. AHAMMAED,
   KUNNATHODIKA HOUSE,CHECK POST,
   P.O. ANAKKAYAM,,MALAPPURAM DISTRICT.

7. MANIKANDAN A.C., S/O. GOPALAKRISHNAN
   NAIR,APPANCHOLATH HOUSE PALLIYALI, PONMALA P.O.

8. MEHABOOB PALODI, S/O. MOHAMMED,
   CHERUVATHUKUNNU,NILAMBUR.

9. JALEEL P.K., S/O. MOHAMMED,
   PERUVANKUZHIYIL HOUSE,
   KANNATHUPARA, MALAPPURAM.

10. K.A.ARAFATH,S/O. ABDUL,
    KARUVALLI HOUSE, P.O. URAKAM-KEEZHUMURI,
    VENGARA, MALAPPURAM DISTRICT.

11. SAMEER T., S/O. AHAMMEDKUTTY,
PALLIKKATTIL HOUSE,PULLIYILANGADI,
P.O., ANAKKAYAM,VIA MANJERI.

12. B.AZAD BENGALATH HOUSE,
MONGAM,MORAYOOR AMSOM,ERNAD TALUK.

BY ADV. SRI.K.HARILAL

RESPONDENTS: COMPLAINAT

STATE OF KERALA,REPRESENTED BY PUBLIC
PROSECUTOR,HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR ADV.SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 12/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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B.A.No. 5507 of 2007

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Dated this the 12th day of September, 2007

ORDER

Application for anticipatory bail. The petitioners face allegations for offences punishable, inter alia, under Sec.332 read with 149 IPC. The crux of the allegations is that a group of political activists who were staging protest against the policies of the Government, formed themselves into an unlawful assembly and attacked the Police. They allegedly pelted stones and turned their ire against Police personnel who were on duty at the scene of the crime. No accused is named in the FIR. It is alleged that Police men engaged in the law and order duty had suffered injuries in the attack. Later investigation revealed the complicity of the petitioners herein, who have been arrayed as accused Nos. 1 to 12. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. They happen to be activists of the opposition political group and because of that they have

been arrayed as accused with an intention to vex and harass them. No serious injury whatsoever has been suffered by the Policemen. Hence, appropriate directions under Sec.438 Cr.P.C may be issued to save the petitioners from the undeserved trauma of arrest and detention, prays the learned counsel for the petitioners.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that it is true that the police have not fortunately suffered any grievous injury, but the fact remains that a police personnel on duty had suffered injuries while they were attacked. The learned Public Prosecutor submits that a serious view is bound to be taken against violence directed at the Police personnel on duty who are only discharging their lawful duties. They are obliged to remain at their place of duty and maintain law and order. Whichever be the political party they have the responsibility to obey the Policemen on duty and attacks against them have to be avoided. Such wanton culpable conduct must, at any rate, be frowned upon by the society. The court's response must also be proportionate and adequate, submits the learned Public Prosecutor.

4. I have considered the submissions of the rival contestants. I have perused the case diary. I have perused the wound certificate. It is unfortunate that there is no sense of responsibility on the part of persons organizing protest activities. The protesters do not appear to realise the need and responsibility to respect the lawful policemen on duty who are charged with the responsibility of controlling the protesters. Any attempt of violence against such Police personnel must be viewed seriously by the Court. Such attempt must be dealt with firmly and put an end to. Right to dissent and protest cannot be at any rate be permitted to degenerate into licence to attack the Police personnel on duty.

5. I must alertly remind myself of the nature,quality and contours of the jurisdiction which I am called upon to invoke and exercise. The jurisdiction which is sought to be invoked is the extraordinary equitable jurisdiction available under Sec.438 Cr.P.C. Invocation of such jurisdiction virtually converts non-bailabe offences into bailable offences on the direction of the Court. Parliament in its wisdom has specified bailable and non bailable offences. When the Court invokes the powers under

Sec.438 Cr.P.C., non bailable offences certainly become bailable ones subject to conditions imposed by the Court. Sufficient satisfactory and compelling reasons must be shown to exist to justify the invocation of such powers under Sec.438 Cr.P.C.

6. I shall carefully avoid any detailed discussions on merits about the acceptability of the allegations or the credibility of the data collected. Suffice it to say that on an anxious consideration of all the relevant inputs, I am satisfied that this is a fit case where the petitioners must appear before the learned Magistrate and seek regular bail in the ordinary and normal course.

7. In the result, this petition is dismissed. Needless to say that if the petitioners appear before the Investigating Officer or the learned Magistrate having jurisdiction and apply for bail,after giving sufficient prior notice to the Prosecutor, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

sj

/TRUE COPY/

P.A.TO JUDGE